

IMPLEMENTATION TEAM MEETING NOTES

October 3, 1996, 9:30 a.m.-3:30 p.m.
NATIONAL MARINE FISHERIES SERVICE OFFICES
PORTLAND, OREGON

I. Greeting and Introductions.

The October 3 meeting of the Implementation Team, held at the National Marine Fisheries offices in Portland, Oregon, was chaired by Donna Darm and Brian Brown of NMFS. The agenda for the October 3 meeting and a list of attendees are attached as Enclosures A and B. The following is a summary (not a verbatim transcript) of items discussed at the meeting, together with actions taken on those items.

Darm provided a general introduction to the meeting, explaining that an IT subgroup had met to discuss the IT rules and procedures document in mid-September; it soon became apparent, she said, that there are a number of important issues that have yet to be resolved. The main issue, which we determined could be resolved fairly easily by the Executive Committee, was the scope of this forum, which includes the NMFS technical teams, the Implementation Team and the Executive Committee. At its September 20 meeting, the Executive Committee agreed that, at least for the interim, this forum will address hydropower operations and issues related to hydropower operations which arise in the course of implementing the Bonneville budget agreement MOA. The other three H's -- harvest, hatchery and habitat -- will be dealt with in other fora.

At the last IT meeting, I agreed to incorporate comments received at the meeting on the draft rules and procedures, any written comments, and any comments or direction from the EC into a new draft rules and procedures document, Darm explained. I have done so, she said, and the result is Enclosure C.

She added that the federal operating agencies have retained a mediator, Suzanne Orenstein, to explore alternative dispute resolution mechanisms with interested parties in the region, and to determine whether or not the region feels such a mechanism would be useful in resolving fish and wildlife-related disputes.

After talking with Suzanne, Darm continued, Jim Weber and Rob Lothrop of the Columbia River Inter-Tribal Fish Commission called me and asked how I would feel about negotiating the rules and procedures, and about having those negotiations facilitated. My reaction, Darm said, is that I don't believe NMFS would be opposed to this idea; however, there are a couple of other issues to take into account. One is the direction we've received from the Executive Committee to get the rules and procedures in place; another is the concern, criticism and general agitation in the region that we don't have those rules and procedures in place. A third concern, she said, is the need to coordinate this effort with the alternative dispute resolution effort that Suzanne and our various attorneys are working on.

What I told Rob and Jim is that I would like to proceed with the discussion of rules and procedures in this forum, because I think there are some standard rules and procedures we can all agree on, and because this discussion will help to clarify any issues that will need to be resolved in a facilitated forum, Darm continued. To that end, I would like to spend some time on the rules and procedures document at today's meeting.

II. Updates.

In-Season Management. Because we are not currently in season, no update was presented at the Oct. 3 meeting.

PATH. Brown explained that the PATH workshop is scheduled for next week in Wenatchee, Washington; one of the purposes of that workshop is to come to closure on PATH's Retrospective Analysis. As part of that process, the PATH participants will be distilling that lengthy document down into 10-15 pages of conclusions.

Integrated Scientific Advisory Board. At the last meeting, Chip McConnaha was asked to frame the Libby-Hungry Horse issue for discussion at today's meeting; however, McConnaha and the rest of the Council fish and wildlife staff are on retreat today, so this discussion was postponed until the November IT meeting.

Dissolved Gas Team. The DGT is continuing to work on its Memorandum of Understanding, and has some research issues that they're dealing with as well, said Brown. The next regular DGT meeting is scheduled for October 15 in Lacey, Washington.

System Configuration Team. Now that we know what Congress will be appropriating for the FY'97 CRFM, as well as what our estimated needs are, we're moving ahead with finalizing the FY'97 program, said COE's Witt Anderson. This ties into the issue of whether or not to proceed with issuing a contract for additional barges.

SCT chairman Bill Hevlin distributed Enclosure D, a written summary of the two issues elevated from SCT to the IT: whether or not to include funding for two additional barges in the Corps' FY'97 budget, and whether or not to designate any funds for improvements in the Snake River juvenile transportation program prior to the 1999 Bi-Op decision point. The document also included letters from IDFG, ODFW, CRITFC and NMFS, explaining those agencies' positions on these issues (see Enclosure D for details).

Hevlin explained that, if the two additional barges are to be available in time for use during the 1998 migration season, a funding/contracting decision needs to be made by October 21. The cost of the two new barges is \$2.4 million (for FY 97). As most of you are aware, he said, Congress has appropriated \$90.2 million for the Corps' FY'97CRFM budget. That's about \$5 million less than what we were figuring on. The Corps is now proposing to save that \$5 million by reducing funding for two other projects: surface collection at The Dalles, and the multi-year turbine passage research program. In spite of this reduction, said Hevlin, there would still be some progress made on those two projects in FY'97, and we would also be able to fund everything else in the budget.

The States of Idaho, Washington and Oregon, as well as CRITFC, are opposed to funding the two additional barges in FY'97, Hevlin said (see Enclosure D for reasons). NMFS, on the other

hand, is recommending that the barges be built, on the basis that they would provide a benefit to survival, and because this measure is called for in the Bi-Op.

A lengthy discussion of this issue ensued, centering primarily on the question of whether or not another use might be found for this \$2.4 million which would provide more benefit to fish. Casavant expressed a recommendation to defer funding of this item for another year, in support of the State of Washington's position on this issue.

Jim Yost said Idaho's policy decision is to support barge funding in 1997 -- we're not necessarily giving an endorsement to future barging efforts, he said, but at this time, we have no reason not to support the SCT budget, and the funding for the two barges.

One reason members of this forum have argued against the 97 barge funding is the fact that the Lower Granite separator will not be functional until 2001, which means you won't be able to keep chinook and steelhead separate, said Weber. Do you have a response to that? A new fish separator is scheduled to be in place for 2001 (there is one there now but only for adults and debris) replied NMFS Jim Ceballos. Improvements to the Lower Granite River juvenile facility were afforded a lower priority in FY 96, that work included the new separator. Certainly you get more benefit from the barges when you get the two separated, added Hevlin. However, you also need more barges, because you need containers available for each species.

In other words, it sounds like there was agreement that the mixing of steelhead is a bigger issue, and there is a process in place to modify the Lower Granite facility to include separation capability, said Brown. The current schedule to have that capability in place is 2001. In response to a question, Anderson said that he would check on the possibility of accelerating construction of the Lower Granite separator.

In the interim, NMFS's conclusion is that these additional barges would provide two specific improvements in the juvenile fish handling process, said Brown. First, you avoid crowding them out of raceways into the barge. Second, you reduce densities in the barge. Acknowledging that there is some uncertainty about the individual contribution of these actions to improved survival, NMFS still feels that the construction of these two barges is warranted, particularly because we reluctantly agreed to defer their construction last year.

Eventually, it was agreed to refer this question back to the System Configuration Team for discussion at their October 9 meeting. There was some debate about exactly what question the SCT should consider. Brown drafted two possible wordings (Enclosure F), but neither, ultimately, received IT endorsement, and no final IT decision was made on the barge construction issue.

In general, the SCT was asked to revisit the possibility that there might be other projects, consistent with regional Snake River recovery plans, that might provide greater biological benefits than the proposed construction of the two new barges. The SCT was also asked to consider the possibility that it might be preferable to use the \$2.4 million earmarked for barge construction as a contingency fund for unexpected cost increases for other projects approved under the FY'97 CRFM. It was agreed to use Bob Heinith's September 30 list of project priorities as a starting point for the SCT discussion.

Anderson agreed that the SCT could reconsider this issue, but made the point that the FY'97

CRFM program has already undergone exhaustive analysis and prioritization. In future, he said any problems with that prioritization need to be brought to our attention a little earlier in the process, because we're at the 11th hour and 59th minute here.

If we were able to get some level of commitment that we might be able to restore savings and slippage, such that, we had more of a comfort level that we could get more money if we could demonstrate the need, would that alleviate the concerns of the states and tribes? Anderson continued. I would want to talk to our SCT representative, but I think your proposal would satisfy our main concerns, said Cooney. From Oregon's perspective, I would agree, said Nigro. I'll pursue that alternative, said Anderson.

Would it be possible to defer the decision point on the barges past October 21? asked Cooney. The longer we delay it, the less likely that the barges will be delivered in time for use during the 1998 migration season, Anderson replied. Do the tribes wish to elevate this, formally? asked Darm. I think we would like the opportunity to have these issues heard, replied Weber; Bob Heinith faxed his prioritization list to the SCT, and I'm not sure to what extent his suggestions were aired. At the same time, we need to look at the question of whether it's appropriate for the Corps to build barges while we apply savings and slippage to other projects we would prefer to see the region commit to. This compromise isn't something that has received the full airing it might deserve. But there is an opportunity to re-allocate these funds within the 1997 program? asked Nigro. Yes, Anderson replied.

If we can reprogram savings and slippage into the FY'97 budget, should we proceed with issuing the barge contract? asked Darm. Based on the guidance I've been given, I would have to object, said Weber. If we can agree to consider the tribes' proposals, and see if we can work them in, is that acceptable? asked Anderson. That strikes me as being an improvement on our position, although we still don't like the barge proposal, replied Weber. From Oregon's perspective, we would remove our objection to barge construction if the Corps could get some assurance that savings and slippage would be restored and, second, if the SCT considers CRITFC's list of additional projects and, in those deliberations, identifies projects that could be added to that list. Does that summarize Washington's position as well? asked Darm. Yes, Cooney replied.

For the record, said Keith Kutchins, the Shoshone-Bannock Tribes oppose all financial expenditures for study, design development and passage improvements at the four Lower Snake River facilities, except for immediate implementation of the engineering, design, permitting and congressional authorization and appropriations to permanently restore the Lower Snake to a natural river. Thank you, said Darm -- that's not what's in the Biological Opinion, however, and we'll move forward with the referral of this issue to the SCT. The Tribes do not object to the SCT revisiting this issue, Kutchins said.

III. Assignments from Executive Committee Meeting of September 20.

a) EC Interim Decision on Scope of IT/EC, Draft Rules and Procedures. Darm distributed Enclosure C, the most recent draft rules and procedures, adding that, at the September 20 Executive Committee meeting, Oregon had brought up the urgency of getting these rules and procedures approved and in place. Their concern arose from the August spill curtailment at The Dalles, she explained. Darm went through the rules and procedures document item by item; a

lengthy discussion ensued.

Darm explained that one issue that will probably need to be resolved before this document is finalized is whether or not it is appropriate to include PATH and the Integrated Science Review Team (ISRT) as technical teams under the EC/IT umbrella. What about the relationship between the ISRT and the Independent Science Advisory Board (also known as the Schiewe-McConnaha Group)? asked Ken Casavant, chairman of the Northwest Power Planning Council. Good question -- I haven't addressed it in this document, but it's something we'll need to resolve, Darm replied.

Another, more philosophical, discussion this group needs to have is about our role -- what, exactly, is our role, and what, exactly, are we trying to accomplish through this process? said Darm. The "Role" section of this document takes a stab at defining that, although the way our role is characterized here is not necessarily the way I would prefer to characterize it (see Section II, Enclosure C for details).

Casavant made the point that the phrase "...coordinates the input of..." is too passive and limited - don't we also develop decisions, resolutions and consensus? he asked. That's another way to characterize it, Darm replied -- we could say instead that our role is to develop consensus on the implementation of the NMFS and USFWS Biological Opinions. It's also the forum in which the federal parties are accountable to the region, and explain the rationale behind their operational decisions in the event of controversy, added Tony Nigro of ODFW. In other words, it's an important communication and informational forum as well.

Referring again to the "Role" section, Darm said there are other FCRPS operations that are not dictated by either of the Biological Opinions. Is this the forum where there region would like to see those issues addressed? An example? asked Keith Kutchins of the Sho-Ban Tribes. Spring Creek Hatchery spill, Lake Pend Oreille draw-up and Mid-Columbia operations, to name three, Darm replied.

Depending on the outcome of the discussions on Fish Passage Center activities, it has also been suggested that we use that mechanism to make requests to the operating agencies regarding more localized operations and hydropower impacts, which don't necessarily have to do with salmon or sturgeon operations, Darm continued. This could also serve as a forum for discussing those requests and operations. You're talking about things like resident fish operations? asked BPA's Dan Daley. That's correct, Darm replied. It seems to me that if we have this existing forum set up to reach consensus on hydropower operations and issues, it makes sense to use that forum for the whole range of hydropower operations and issues, she said. I think so too, and I think the Council may end up there as well, said Casavant.

You also mention "matters related to hydropower operations," said Daley. Those are...? System configuration measures covered in the Bonneville MOA, Darm replied. What Will Stelle said at the EC meeting was that, in his opinion, the IT is the appropriate venue for resolving disputes between NMFS and the other fish and wildlife managers in the region. That includes disputes that arise from funding issues that come under the MOA; in other words, if, in the course of the CBFWA prioritization process, one of the fish managers had a dispute with NMFS over our insistence that something be funded as an ESA requirement, and wanted to elevate that issue for a policy decision, this would be the body where that dispute would be resolved.

Fred Olney of USFWS added that a separate process exists to coordinate the implementation of the sturgeon and Snake River snail Biological Opinions; any disputes that cannot be resolved in that process are brought to the IT for resolution.

CRITFC's Jim Weber observed that the MOA lays out the specific areas where the IT process will be used for dispute resolution. I think CRITFC would be reluctant to amend the processes laid out in the MOA along the lines you're suggesting, he said. For the interim, at least, we'd like to leave that where it is. You're talking about matters related to funding and prioritization? asked Darm. Yes, Weber replied. So noted, said Darm.

She summarized her notes on the "Role" section as follows: change "coordinates the input of" to "developing consensus and resolving disputes;" that the group should also look at hydropower operations not necessarily related to the salmon Biological Opinions as appropriate; that this is a forum that interfaces with existing processes to implement the USFWS Bi-Ops on snails and sturgeon; that decisions are limited in scope to hydropower decisions in the interim; that this organization is a vehicle by which the federal parties are accountable to others in the region for the decisions they make.

The group continued down through the rules and procedures document, making the following specific comments and wording suggestions:

Under "Role," add a comma after the word "sovereigns" in the first sentence, and delete the word "other."

Regarding Section III, "Goals," there was consensus that the second alternative under b) should be the primary objective of IT deliberations; the first alternative is the fallback position if agreement on operations cannot be reached.

The group discussed the membership of the EC, IT and technical teams (Section VI), particularly the question of whether the federal operating agencies should have full membership at all three levels. One possibility that was discussed was that the operating agencies would be regular members of the technical teams and would also be regular members of the Implementation Team, except when the IT is entertaining a dispute from the Technical Management Team. The opinion was also expressed that, because these agencies have ultimate operational decisionmaking authority anyway, denying them the ability to object to a course of action recommended by the IT is a moot issue. It might be better, suggested Darm, to address this concern by ensuring that all members' positions are noted for the record.

It was tentatively agreed that the Power Planning Council would have full membership status at all three levels, although no formal consensus emerged on this issue.

Also under Section VI (and elsewhere in the document as appropriate), it was agreed to substitute Idaho Power Company and the Mid-Columbia PUDs for the phrase "other entities."

The question of whether or not the IT meetings should be facilitated, and who should chair them, was left open for now, at the request of Weber.

Tom Cooney of WDFW suggested that the EC, IT and technical team meeting agendas include a public comment period, if this could be accommodated without destroying the meeting

structure.

Under section XI c) (Decisionmaking and Dispute Resolution), it was suggested that the words "...could have been raised and decided in advance of the migration season" be replaced with "...were raised and/or decided in advance of the migration season."

Under the same section, it was agreed to replace "...the chair will identify those implementation issues that..." with "...the team shall identify those implementation issues that..."

Darm said she would incorporate these changes into a new draft of the document before the next IT meeting. She asked that any additional comments on the draft rules and procedures document be submitted to her by October 25.

b. Emergency Operations. Darm distributed Enclosure E, a letter from ODFW Director Rudy Rosen to NMFS Regional Director Will Stelle outlining the state's concerns about the August spill curtailment at The Dalles Dam as well as some tasks for the IT regarding system emergency protocols:

- the development of a clear definition of "emergency" -- what kinds of situations will require changes to FCRPS operations?
- the development of emergency response protocols that involve the State of Oregon and others in assessments of response alternatives prior to making a decision
- the development of a structure for determining whether FCRPS operators should mitigate for fish losses caused by emergency responses.

We won't really come to closure on this today, said Darm, but I wanted to be sure it was on everyone's screen as an important issue relative to the rules and procedures discussion.

BPA's Greg Delwiche volunteered Phil Thor to pull together an IT subgroup meeting prior to the November 7 IT meeting to put some flesh on the bones of the Oregon letter and develop a strawman emergency procedures document for full IT consideration. Phil was asked to work with Cindy Henriksen, Michael Newsom and Tony Nigro.

c) 1996 Operations Review. We'll need to reserve space on the December 5 agenda for a presentation on this topic, said Brown -- the summary that was going to be presented at the September 20 meeting was put on hold, partly because some of the needed biological information was not yet ready, and partly because there was interest in vetting the '96 operations review presentation to the Executive Committee here first.

d) ISAB Priorities. This item was placed on the agenda to give us an opportunity to discuss what the ISAB's priorities are, said Palensky. Does this process allow the flexibility for us to elevate an issue from, say, the SCT, to the ISAB, or is this all being planned well in advance? asked Anderson. That's part of the discussion, Palensky replied. Chip was asked this question in another forum, and the response was, those issues come from a variety of directions right now. So who does decide what the ISAB's priorities are? asked Anderson. The ISAB, working with Chip, the ISAB coordinator, Darm replied. One of the issues is this discussion of a shorter time-frame - they already have their priorities for the next fiscal year. NMFS views the IT as the primary point of coordination on issues to be elevated to ISAB; ultimately, however, the ISAB

decides what issues it will review. In response to a question, Darm said the IT will be given an opportunity to review the ISAB's list of priorities at their next meeting

IV. Dworshak Temperature Control.

Fred Olney of USFWS distributed Enclosure G, a summary of the Dworshak National Fish Hatchery water supply/temperature control situation. He went through this document in some detail (see Enclosure G for details). This issue was not part of the SCT funding process, observed Darm. The bottom line, said Olney, is that we estimate that it would cost about \$1.1 million to make the necessary improvements. This would probably fit into the \$21 million reimbursible portion of the cap, for us, said Anderson.

So you're asking for IT support for this project? asked Darm. Yes, Olney replied. After a few minutes of discussion, in response to a question from Darm, the IT expressed no objection to the need for this project, as long as it was prioritized within the overall FY'97 CRFM budget.

V. Five-Year Implementation Plan Progress and Schedule for Completion.

This process is ongoing, said Darm, and most of the people at this table are participating in it in one forum or another. It was agreed to drop this item from future IT agendas until a draft Implementation Plan is available for IT review.

VI. Next IT Meeting Date and Agenda Items, Approval of August 29 Meeting Minutes.

The next meeting of the Implementation Team was set for Thursday, November 7, from 9:30 a.m. to 3:30 p.m. at NMFS's Portland offices. Prior to that meeting, it was agreed to convene an ad hoc IT subcommittee to draft a strawman emergency procedures document. A second November meeting to discuss IT system emergency protocols and the draft rules and procedures document was tentatively set for Thursday, November 21; this meeting will be held if the IT feels more discussion on these items is needed before the next regularly-scheduled meeting. The December IT meeting was set for Thursday, December 5. It was agreed that any comments on the August 29 IT meeting notes would be provided to John Palensky. Meeting notes prepared by Jeff Kuechle, BPA contractor (503/249-0179).